

SOD
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R.O. Draft 09/20/2002

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Success Project, California

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND
LOWER TULE RIVER IRRIGATION DISTRICT, PORTERVILLE IRRIGATION DISTRICT,
VANDALIA IRRIGATION DISTRICT, AND PIONEER WATER COMPANY PROVIDING
FOR THE REPAYMENT OF FUNDS EXPENDED FOR FEDERALLY
PERFORMED SAFETY OF DAMS ACT, SPILLWAY WIDENING MODIFICATION

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THIS CONTRACT, made this _____ day of _____, 20____, in
pursuance of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or
supplementary thereto, including the Reclamation Safety of Dams Act of November 2, 1978, as
amended August 28, 1984, (92 Stat. 2471) and October 27, 2000, (114 Stat. 1441), all
collectively hereinafter referred to as the Safety of Dams (SOD) Act and the Water Resources
Development Act (WRDA) of 1986, (P.L. 99-662, 100 Stat. 4263, 33 U.S.C. 467n) between the
UNITED STATES OF AMERICA, hereinafter referred to as the United States, and the Lower
Tule River Irrigation District, the Porterville Irrigation District, the Vandalia Irrigation District,
and the Pioneer Water Company hereafter referred to as Contractors each duly organized,
existing, and acting pursuant to state law, with their principal places of business in California.

EXPLANATORY RECITALS

A. The Corp of Engineers is undertaking a Spillway Widening Modification of the
Success Dam. Pursuant to the SOD Act, the U.S. Bureau of Reclamation (Reclamation), as the
Contracting Officer, will collect the Contractors' share of the costs associated with this work.
This work shall include, but is not limited to, widening the existing spillway and sill

1 approximately an additional 44 feet and any environmental mitigation costs associated with the
2 spillway modification work.

3 B. In addition to the SOD Act, this Contract will be executed in accordance with the
4 December 29, 1958, "Memorandum of Agreement between the Department of the Army and the
5 Department of the Interior on Division of Responsibilities in the Central Valley Basin,
6 California."

7 C. Each Contractor shall pay to the United States its proportionate share of the
8 repayment obligations as follows and pursuant to the attached Exhibit A:

9	Lower Tule River Irrigation District	Seventy-One and Five-Tenths Percent	71.5%
10	Porterville Irrigation District	Seventeen Percent	17.0%
11	Vandalia Irrigation District	Four Percent	4.0%
12	Pioneer Water Company	Seven and Five-Tenths Percent	7.5%

13 D. Both WRDA and the SOD Act provides that fifteen percent (15%) of the costs
14 incurred as the result of new hydrologic or seismic data or changes in state-of-the-art design or
15 construction criteria deemed necessary for safety purposes shall be reimbursed/recovered and
16 allocated to the authorized purposes of the structure.

17 E. The original construction irrigation storage allocation has been identified in contract
18 number 14-06-200-2110A between the United States and the Contractors, and is nine and five-
19 tenths percent (9.5%). This SOD Act Contract will utilize the same irrigation storage allocation.
20 Therefore, 9.5% of the fifteen percent (15%) of the total cost of the Reclamation SOD Act
21 modification for the Success Project Spillway Widening is reimbursable pursuant to this

1 contract. The Spillway Widening projected cost estimate is one million four hundred and ninety-
2 five thousand dollars (\$1,495,000.00).

3 F. The Contractors agree to repay nine and five-tenths percent (9.5%) of the fifteen
4 percent (15%) of the total actual cost of the Reclamation SOD Act modification for the Success
5 Project Spillway Widening.

6 DEFINITIONS

7 1. When used herein, the term:

8 (a) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized
9 representative acting pursuant to this Contract or applicable Federal and Reclamation Laws or
10 regulations;

11 (b) "Corps" shall mean the United States Army Corps of Engineers that will be
12 administering the Success Dam Spillway Widening Project modification construction contract;

13 (c) "Project Cost" shall mean all costs incurred by the United States Government in
14 accordance with the terms of this contract directly related to construction of the Project. Subject
15 to the provisions of this contract, the term shall include, but is not necessarily limited to
16 engineering and design costs, construction costs, and project closeout costs. The term does not
17 include any costs for operation, maintenance, repair, replacement, or rehabilitation;

18 (d) "Repayment Obligation" shall mean nine and five-tenths percent (9.5%) of the fifteen
19 percent (15%) of the actual costs of the Success Dam Spillway Widening;

1 (e) "Substantially Complete" shall mean that time when construction of the Success Dam
2 Spillway Widening modifications have physically been completed and accepted by the
3 Corps;and

4 (f) "Success Dam Spillway Widening Project" (Project) shall mean the widening of the
5 existing Success Dam spillway and sill approximately an additional 44 feet in order to
6 accommodate the maximum probable flood and any associated environmental mitigation.

7 TERM OF THE CONTRACT

8 2. This Contract shall become effective on the date first written above, and shall
9 remain in effect until the Contractors have fully repaid to the United States the actual cost
10 described in Article 4(a) associated with the Reclamation SOD Act modification for the
11 Project.

12 RECLAMATION SAFETY OF DAMS ACT MODIFICATIONS

13

14 3. (a) The Project shall include, but is not limited to, widening the existing
15 spillway and sill approximately an additional 44 feet and any environmental mitigation
16 associated with the spillway modification work.

17 (b) The Contracting Officer will provide the Contractors with a quarterly
18 report covering; construction status, specifications conformance, progress report, and accounting
19 analyses of SOD Act expenditures when such reports and analyses are received from the Corps.

20 (c) The Contracting Officer will provide the Contractors with a draft Project
21 Cost report for the Project after Project construction is deemed Substantially Complete and after
22 the draft report is received from the Corps. The Contractors shall have 120 days from receipt of
23 this draft to review and comment. The Contractors shall have access to documentation relating

1 to the Project SOD modifications costs throughout the 120-day period. The Contracting Officer
2 shall issue the final Project cost report and total repayment obligation after consultation among
3 the Contractors, the Corps, and the Contracting Officer.

4 (d) The Contractors may appeal the Contracting Officer's decision on the
5 final cost report and final total repayment obligation to the Commissioner of Reclamation, who
6 shall make the final administrative agency determination. The Contracting Officer's final cost
7 report, final total repayment obligation, and the annual irrigation repayment schedules shall take
8 effect during the pendency of any appeal. If the Contractors' appeal is successful, any resultant
9 adjustments shall be credited to the annual payments.

10 REPAYMENT OBLIGATION--TERMS OF REPAYMENT

11 4. (a) The Contractors shall repay to the United States nine and five-tenths
12 percent (9.5%) of the fifteen percent (15%) of the actual cost incurred by the Corps for the
13 Project SOD Act modification described in Article 3(a) above. The actual cost will include all
14 Project Costs. The Contracting Officer will notify the Contractors in writing the date on which
15 the Project SOD Act modification is deemed "Substantially Complete."

16 (b) Reclamation's irrigation payment capacity study shows that the
17 Contractors, at this time, do not have the ability to pay for the irrigation allocation. However,
18 the Contractors agree to make payments to repay the irrigation allocation without interest
19 beginning October 1, of the next calendar year after the Project has been deemed to be
20 Substantially Complete and every year thereafter until the Irrigation Allocation have been repaid.
21 Each Contractor shall pay to the United States its proportionate annual amount identified in
22 Exhibit A.

1 (c) The Contractors reserve the right to prepay all or any portion of the
2 outstanding balance of the Irrigation Allocation at any time without penalty.

3 TITLE TO REMAIN IN THE UNITED STATES

4 5. (a) Title to the Success Dam Project facilities shall remain in the name of the
5 United States until otherwise provided by the Congress, notwithstanding the full payment of the
6 Contractors' repayment obligation under this Contract, to the United States.

7 (b) The rights and obligations created hereby are supplementary to and do not
8 supersede or affect the rights and obligations under any prior contracts between the United States
9 and the Contractors.

10 CHARGES FOR DELINQUENT PAYMENTS

11 6. (a) The Contractors shall be subject to interest, administrative, and penalty
12 charges on delinquent installments or payments. When a payment is not received by the due
13 date, the Contractor(s) shall pay an interest charge for each day the payment is delinquent
14 beyond the due date. When a payment becomes 60 days delinquent, the Contractor(s) shall pay
15 an administrative charge to cover additional costs of billing and processing the delinquent
16 payment. When a payment is delinquent 90 days or more, the Contractor(s) shall pay an
17 additional penalty charge of 6 percent per year for each day the payment is delinquent beyond
18 the due date. Further, the Contractor(s) shall pay any fees incurred for debt collection services
19 associated with a delinquent payment.

20
21 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
22 in the Federal Register by the Department of the Treasury for application to overdue payments,
23 or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project
24 Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date
25 and remain fixed for the duration of the delinquent period.

26
27 (c) When a partial payment on a delinquent account is received, the amount
28 received shall be applied, first to the penalty, second to the administrative charges, third to the
29 accrued interest, and finally to the overdue payment.

30
31 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

32
33 7. (a) The obligation of the Contractors to pay the United States as provided in
34 this Contract is a general obligation of the Contractors notwithstanding the manner in which the

1 obligation may be distributed among the Contractors' water users and notwithstanding the default
2 of individual water users in their obligation to the Contractor.

3
4 (b) The payment of charges becoming due pursuant to this contract is a condition
5 precedent to receiving benefits under this contract. The United States shall not operate Success
6 Dam for the benefit of the Contractors during any period in which the Contractors are in arrears
7 for more than 12 months in the payment of any construction charges due the United States under
8 this contract.

9 CONFIRMATION OF CONTRACT

10
11 8. The Contractors, after the execution of this Contract, shall promptly seek to
12 secure a decree of a court of competent jurisdiction of the State of California, confirming the
13 execution of this Contract. The Contractors shall furnish the United States a certified copy of the
14 final decree, the validation proceedings, and all pertinent supporting records of the court
15 approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and
16 binding on the Contractors. This Contract shall not be binding on the United States until such
17 final decree has been secured.

18 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

19
20
21 9. The expenditure or advance of any money or the performance of any obligation of
22 the United States under this Contract shall be contingent upon appropriation or allotment of
23 funds. Absence of appropriation or allotment of funds shall not relieve the Contractors from any
24 obligations under this Contract. No liability shall accrue to the United States in case funds are
25 not appropriated or allotted.

26 OFFICIALS NOT TO BENEFIT

27
28
29 10. No Member of, or Delegate to Congress, Resident Commissioner, or official of
30 the Contractors shall benefit from this Contract other than as a water user or landowner in the
31 same manner as other water users or landowners.

32 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

33
34
35 11. The provisions of this Contract shall apply to and bind the successors and assigns of the
36 parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall
37 be valid until approved in writing by the Contracting Officer.

1
2 BOOKS AND RECORDS
3

4 12. The Contractors shall establish and maintain accounts and other books and
5 records pertaining to administration of the terms and conditions of this Contract. Subject to
6 applicable Federal laws and regulations, each party to this Contract shall have the right during
7 office hours to examine and make copies of the other parties' books and records relating to
8 matters covered by this Contract.

9 DETERMINATIONS
10

11 13. The Contracting Officer shall have the right to make determinations necessary to
12 administer this Contract that are consistent with the expressed and implied provisions of this
13 Contract, the laws of the United States and the State of California and the rules and regulations
14 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation
15 with the Contractors.

16
17 NOTICES
18

19 14. Any notice, demand, or request authorized or required by this Contract shall be
20 deemed to have been given, on behalf of the Contractors, when mailed, postage prepaid, or
21 delivered to:

22 Regional Director
23 Mid-Pacific Region
24 Bureau of Reclamation
25 2800 Cottage Way
26 Sacramento, California 95825-1898
27

28 and on behalf of the United States, when mailed, postage prepaid, or delivered to each
29 Contractor:

30 Lower Tule River Irrigation
31 District P O Box 4388
32 Porterville, CA 93258-4388
33

Vandalia Irrigation District
2032 South Hillcrest
Porterville, CA 93257

34 Porterville Irrigation District
35 P O Box 1248
36 Porterville, CA 93258-1248
37

Pioneer Water Company
P O Box 4388
Porterville, CA 93258

38 The designation of the addressee or the address may be changed by notice given in the same
39 manner as provided in this Article for other notices.
40

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of

the day and year first above written.

UNITED STATES OF AMERICA

By: _____
Regional Director, Mid-Pacific Region
Bureau of Reclamation

Approved as to Legal Form
and Sufficiency

By: _____
Office of the Solicitor

1 LOWER TULE RIVER IRRIGATION DISTRICT

2
3 By: _____
4 President, Board of Directors

5 (SEAL)

6
7 Attest:

8
9 _____
10 Secretary of the Board

11
12
13 PORTERVILLE IRRIGATION DISTRICT

14
15 By: _____
16 President, Board of Directors

17 (SEAL)

18 Attest:

19
20 _____
21 Secretary of the Board

22
23
24 VANDALIA IRRIGATION DISTRICT

25
26 By: _____
27 President, Board of Directors

28 (SEAL)

29 Attest:

30
31 _____
32 Secretary of the Board

33
34
35 PIONEER WATER COMPANY

36
37 By: _____
38 Chairman of the Board

39 (SEAL)

40
41 Attest:

42
43 _____
44 Secretary of the Board

EXHIBIT A
ANNUAL PAYMENT SCHEDULE
FOR SPILLWAY WIDENING MODIFICATION

Lower Tule River Irrigation District	71.5%
Porterville Irrigation District	17.0%
Vandalia Irrigation District	4.0%
Pioneer Water Company	7.5%

The estimated cost for the Project spillway widening modification is one million four hundred and ninety-five thousand dollars (\$1,495,000.00) of which the Contractors are collectively responsible for a proportion share of the total reimbursable cost. Said reimbursable cost is without an interest component. Based on the estimated cost of \$1,495,000.00, the Contractors are responsible for repayment of twenty-one thousand three hundred and four dollars (\$21,304) (\$1,495,000.00 x 15% = \$224,250 x 9.5% = \$21,304). Therefore, each contractors is responsible for the amounts listed below:

Lower Tule River Irrigation District	\$21,304 x 71.5%	=	\$15,232.00
Porterville Irrigation District	\$21,304 x 17.0%	=	\$ 3,622.00
Vandalia Irrigation District	\$21,304 x 4.0%	=	\$ 852.00
Pioneer Water Company	\$21,304 x 7.5%	=	<u>\$ 1,598.00</u>
			\$21,304.00

Contractors Annual Payments Based on the above Allocated costs:

	<u>Lower Tule River ID</u>	<u>Porterville ID</u>	<u>Vandalia ID</u>	<u>Pioneer WC</u>
October 1, 200__*	\$5,077.00	\$1,207.00	\$284.00	\$533.00
October 1, 200__	\$5,077.00	\$1,207.00	\$284.00	\$533.00
October 1, 200__	\$5,077.00	\$1,207.00	\$284.00	\$533.00
October 1, 200__	**	**	**	**

* The first payment will become due and payable on October 1 of the next calendar year after the Project has been deemed to be Substantially Complete. For example: The Project is deemed Substantially Complete on June 2, 2004. First payment will become due and payable on October 1, 2005.

** If the reimbursable cost exceeds \$21,304 the Contractors shall continue with the specified annual payments as described above until paid. If the annual payment in any year is less than the payment shown above, the contractor shall pay that amount in its entirety.